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8 IN THE UNITED STATES DISTRICT COURT

9 DISTRICT OF ARIZONA

10 United States of America,
11 Plaintiff,
12 vs.
13 Aaron Thomas Mitchell,
14 Defendant.

CR22-1545-RM-(EJM)

**OBJECTION AND MOTION TO PRECLUDE
EXPERT TESTIMONY OF FBI SPECIAL
AGENT FORENSIC EXAMINER J. PATRICK
CULLEN**

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17 Defendant Aaron Thomas Mitchell, through undersigned counsel, moves the Court to
18 issue an order precluding the government from introducing the proposed expert testimony of
19 FBI Special Agent Forensic Examiner J. Patrick Cullen, on the grounds that its notice (Doc.
20 79) is incomplete pursuant to the requirements of Fed. R. Crim. P. 16(a)(1)(G)(iii).

21 Rule 16(a)(1)(G)(iii) requires that the disclosure must include “a complete statement of
22 all opinions that the government will elicit from the witness in its case-in-chief, or during its
23 rebuttal to counter testimony that the defendant has timely disclosed under (b)(1)(C);” and
24 “the bases and reasons for them” and that “[t]he witness must approve and sign the disclosure.”

25 In its notice, the government describes Agent Cullen’s proposed testimony in only the
26 most cursory and conclusory terms. (For example, the notice states that “Agent Cullen will
27 discuss the distinction between an advance logical extraction and a full file system extraction,”
but it does not state what that distinction actually is.) Continuing in this superficial way, the

1 notice outlines the general topics that Agent Cullen about which intends to testify, but does
2 not adequately describe any of his opinions, let alone provide the bases or reasons for them.
3 Nor has the government disclosed an approved and signed report by Agent Cullen including a
4 complete statement of the opinions the government will elicit or the bases and reasons for
5 them.

6 Because of the government's noncompliance with Fed. R. Crim. P. 16, Agent Cullen's
7 expert witness testimony should be precluded.

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9 RESPECTFULLY SUBMITTED: January 8, 2024.

10 JON M. SANDS
11 Federal Public Defender

12 *s/ Benjamin D. Singerman* _____
13 BENJAMIN D. SINGERMAN
14 Assistant Federal Public Defender

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